

HEALTH AND SENIOR SERVICES

OFFICE OF BUDGET, FINANCE AND INFORMATION TECHNOLOGY

BUREAU OF VITAL STATISTICS AND REGISTRATION

Birth Certificates

Proposed Readoption with Amendments: N.J.A.C. 8:2

Authorized By: Clifton R. Lacy, M.D.

Commissioner, Department of Health and Senior Services

Authority: N.J.S.A. 26:8-23.

Calendar Reference: See Summary below for explanation of exception to  
calendar requirement.

Proposal Number: PRN 2005 -14

Submit written comments by March 19, 2005 to:

Joseph A. Komosinski, State Registrar

Department of Health and Senior Services

P.O. Box 370

Trenton, New Jersey 08625-0370

The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:2, Birth Certificates, is scheduled to expire on December 6, 2004. N.J.S.A. 26:8-1, et seq., pertaining to the registration of vital statistics, establishes, among other things, the duties and responsibilities of physicians, midwives, parents and others, associated with the proper execution and return of a certificate of birth. N.J.A.C. 8:2 creates the birth

record, sets forth the options open to a parent in the naming of a child and explains who shall act as the informant with regard to the completion of the original birth certificate. The Department of Health and Senior Services (the Department) has reviewed N.J.A.C. 8:2 and, with the exception of the amendments described below, has determined the existing rules to be necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated. Accordingly, the Department proposes that N.J.A.C. 8:2 be readopted, with amendments.

During the five years since the Department last readopted the provisions of N.J.A.C. 8:2, the Legislature has passed P.L. 2003, c. 246, the Domestic Partnership Act, and P.L. 2003, 312, an Act providing for the creation of a Certificate of Birth Resulting in Stillbirth. In addition, on April 24, 2004, the Governor signed Executive Order #18, regarding measures to deter the misuse of vital records by establishing safeguards regarding the issuance of such records. Many of the amendments to N.J.A.C. 8:2 proposed by the Department and described in detail below are necessary in order to adhere to the requirements of these laws and executive order.

A summary of the subchapters of N.J.A.C. 8:2 follows:

N.J.A.C. 8:2-1 sets forth the purpose and scope of the chapter, defines words and terms to be used throughout the chapter, addresses the designation of a child's name and the names of the child's parents on the birth record, and indicates who shall act as informant, providing the necessary information to complete the original birth certificate.

The Department is proposing that the title of Subchapter 1 and the text of N.J.A.C. 8:1.1, Purpose and scope, be amended so as to incorporate appropriate references to the new Certificate of Birth Resulting in Stillbirth and the procedures associated therewith. Specifically, the Department is proposing that the title of Subchapter 1 be amended from “CREATION OF BIRTH RECORD,” to, “CREATION OF A RECORD OF LIVE BIRTH AND A CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH.” In addition, the Department is proposing that similar amendments be made to the text of N.J.A.C. 8:2-1.1, indicating that the chapter creates not the “birth record,” but instead the record of live birth and the Certificate of Birth Resulting in Stillbirth. Also, the Department is proposing that the final sentence in N.J.A.C. 8:2-1.1 be amended to reflect that the chapter sets forth the options open to a parent in the naming of the child, and in the event of a stillbirth, the option not to name the child, and that the chapter clarifies who the informant of the birth information should be. Finally, the Department is proposing that, in addition to prohibiting the use of obscenities or numerical characters in a child’s name, as is done under existing N.J.A.C. 8:2-1.1, the Department also prohibit the use of symbols in a child’s name. The reason for this proposed amendment is that the Department cannot record a name which consists of or contains non-alphabetical symbols. This amendment is not intended, however, to prohibit the use of accent marks or similar markings which are traditionally used in association with alphabetical characters.

The Department is proposing that N.J.A.C. 8:2-1.2 be amended so as to incorporate new terms which are used throughout the proposed amendments to

N.J.A.C. 8:2, ensuring consistency with N.J.S.A. 26:8-1, et seq., P.L. 2003, c. 246, P.L. 2003, c. 312, and Executive Order #18. Specifically:

1. The Department is proposing the introduction of a new term: “Certificate of Birth Resulting in Stillbirth.” This term would mean a certificate created from the information obtained from the fetal death certificate at the request of the parent of a stillborn child where the fetal death has been registered with the Department of Health and Senior Services. Both the inclusion of the proposed new term and the proposed definition of that term are consistent with the provisions of P.L. 2003, c. 312.

2. The Department is proposing the introduction of a new term: “certified copy.” This term would mean a copy of a vital record issued on a special type of safety paper containing a variety of security features and stamped with a raised seal of the State of New Jersey or the seal of the municipality or county where the copies are issued, and verified by the Office of the State Registrar as true and correct. Executive Order #18, mentioned above, requires that the Department designate a form for certified copies of vital records which contains safety features for authentication purposes and to deter forgery, and that this form shall be “readily distinguishable” from the form designated for certifications of vital records. The introduction of the term, “Certified Copy,” as defined above, is intended to ensure consistency with Executive Order #18.

3. The Department is proposing the introduction of a new term: “certification.” This term would mean a document containing information obtained from a vital record made available for informational purposes only. The

“certification” would not be used for proof of identity or for legal purposes. It would be created on plain bond paper without the raised seal of the State of New Jersey or the seal of the municipality or county where the certifications are issued. Both the inclusion of the proposed new term and the proposed definition of that term are consistent with the dictates of Executive Order #18.

4. The Department is proposing the introduction of the new terms: “fetal death” and “stillbirth.” These terms are synonymous and would mean death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of the pregnancy; the death is indicated by the fact that after such expulsion, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. The proposed definition of “fetal death” or “stillbirth” would also indicate that, “[h]eartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.” It is necessary to include a definition of these synonymous terms because the terms, “fetal death” and “stillbirth” are used within the proposed amendments to this chapter pertaining to the Certificate of Birth Resulting in Stillbirth. With the exception of the final sentence of the proposed definition described above, the language of the proposed definition at N.J.A.C. 8:2-1.1 of “fetal death” or “stillbirth” is identical to the definition of those same terms found at N.J.S.A. 26:6-1. The final sentence of the proposed definition is taken from the definition of the term “fetal death” which is found within the *Model State Vital Statistics Act and Regulations*, United States

Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (1992 Revision). It is important to include the sentence which appears in the CDC recommended definition of “fetal death,” namely, “[h]eartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps,” because the Department of Health and Senior Services is required to report the State’s vital statistics to the CDC. In order for those statistics to have any meaning relative to the vital statistics reported throughout the country by other States, the Department’s definition of “fetal death” or “stillbirth” must be consistent with the CDC recommended definition.

5. The Department is proposing the introduction of a new term: “genealogical record.” This term would mean a vital record traditionally requested for the purpose of obtaining the lineage of a person, family or group from a family. Specifically, the definition would provide that records of birth are considered genealogical after 80 years have passed from the date of the birth. The reason for distinguishing between ordinary records and genealogical records, is that under proposed N.J.A.C. 8:2-3.1(a), whereas the Department would charge a fee of \$25.00 for each search of a non-genealogical record of birth, whether or not a certification or certified copy is made, for the search of genealogical records, the Department would charge a fee of \$25.00 for the first year searched only and would then charge \$1.00 for each additional year searched.

6. The Department is proposing the introduction of a new term: “identify.” This term would mean to provide, by way of approved application, letter, or facsimile, detailed proof of knowledge of the vital record being requested and must include at a minimum, all information requested on the Vital Statistics and Registration application form. The Department is proposing that this new term be added because it is used within proposed new subchapter 2 pertaining to the acquisition of a certified copy of a record of live birth and within proposed new N.J.A.C. 8:2-1.3(d) regarding acquisition of a certified copy of a Certificate of Birth Resulting in Stillbirth. Executive Order #18 requires that the Department undertake measures to deter the misuse of vital records by establishing safeguards regarding the issuance of such records. Consequently, within proposed new N.J.A.C. 8:2-2.1 and N.J.A.C. 8:2-1.3(d) the Department would require, among other things, that an individual requesting a certified copy of a record of live birth or Certificate of Birth Resulting in Stillbirth must be able to identify the record.

7. The Department is proposing the introduction of a new term: “licensed health care professional.” This term would mean a physician, physician assistant, advanced practice nurse, registered nurse, licensed practical nurse, or any other health care professional licensed under N.J.S.A. 45 or analogous statutes in other States. The proposed definition would also state that the licensed health care professional need not be the individual who performed the delivery in order to transmit the parent’s written request for a Certificate of Birth Resulting in Stillbirth to the State Registrar pursuant to N.J.A.C. 8:2-1.3. Title 45

of the New Jersey Statutes contains the laws pertaining to the licensing of individuals within the State for all professions and occupations, including those relating to health care. Therefore, it is logical to define “licensed health care professional” as those individuals who are licensed health care professionals, pursuant to N.J.S.A. 45. With regard to expanding the definition of “licensed health care professional,” for the sole purpose of submitting a parent’s request for a Certificate of Birth Resulting in Stillbirth to the State Registrar, to include health care professionals licensed in other States under statutes analogous to N.J.S.A. 45, in some instances parent’s who reside out of state, but who have undergone the delivery of a stillborn child in New Jersey, may want to request a Certificate of Birth Resulting in Stillbirth. It may not be until the parent who resides out of state returns home that he or she is advised by a family physician or clinical psychologist that obtaining a Certificate of Birth Resulting in Stillbirth may be beneficial to the parent’s recovery from the trauma associated with delivery of a stillborn child. Since the clinical event of the stillbirth has already been recorded for medical purposes with the State Registrar as a “fetal death” and since the Certificate of Birth Resulting in Stillbirth is a comfort document designed for the benefit of the parent rather than the State, the Department has deemed it appropriate to allow out-of-state licensed health care professionals to submit a request for a Certificate of Birth Resulting in Stillbirth to the State Registrar on behalf of the parent, thereby easing the burden on the parent to obtain the certificate.



8. The Department is proposing the introduction of a new term: “live birth.” This term would mean the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of the pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. The proposed definition of “live birth” would also indicate that, “[h]eartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.” As with “fetal death” or “stillbirth,” discussed above, it is necessary to include a definition of “live birth” because the term is used within the proposed amendments to this chapter pertaining to the Certificate of Birth Resulting in Stillbirth. With the exception of the final sentence of the proposed definition described above, the language of the proposed definition at N.J.A.C. 8:2-1.1 of “live birth” is identical to the definition of those same terms found at N.J.S.A. 26:8-1. The final sentence of the proposed definition is taken from the definition of the term “live birth” which is found within the *Model State Vital Statistics Act and Regulations*, United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (1992 Revision). It is important to include the sentence which appears in the CDC recommended definition of “live birth,” namely, “[h]eartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps,” because the Department

of Health and Senior Services is required to report the State's vital statistics to the CDC. In order for those statistics to have any meaning relative to the vital statistics reported throughout the country by other States, the Department's definition of "live birth" must be consistent with the CDC recommended definition.

9. The Department is proposing the introduction of a new term: "local registrar" or "municipal registrar." These terms are synonymous and would mean the local registrar of vital statistics of any district. As with the introduction of the terms, "stillbirth" and "live birth," discussed above, it is necessary to include a definition of "local registrar" or "municipal registrar" because the terms are used within the proposed amendments to this chapter pertaining to the Certificate of Birth Resulting in Stillbirth.

10. The Department is proposing the introduction of a new term: "vital record." This term would mean the birth, death, fetal death, marriage and domestic partnership records from which vital statistics are produced. The proposed definition of this term is consistent with the definition which appears in N.J.S.A. 26:8-1.

11. The Department is proposing the introduction of a new term: "vital statistic." This term would mean statistics concerning births, deaths, fetal deaths, marriages and domestic partnerships established pursuant to P.L. 2003, c.246 (N.J.S.A. 26:8A-1, et seq.). The proposed definition of this term is consistent with the definition which appears in N.J.S.A. 26:8-1.

The Department is proposing new rule N.J.A.C. 8:2-1.3, Creation of a Certificate of Birth Resulting in Stillbirth: Application for Certificate, Issuance of

Certificate; Delayed Reports, in accordance with P.L. 2003, c. 312 (N.J.S.A. 26:8-37). Specifically, proposed new N.J.A.C. 8:2-1.3, reflects the requirements of the above cited statute, namely, that (1) a Certificate of Birth Resulting in Stillbirth shall be created by the State Registrar upon a parent's written request that has been transmitted to the State Registrar by a licensed health care professional on the parent's behalf, (2) a copy of the Certificate of Birth Resulting in Stillbirth shall be filed by the State Registrar with the local registrar of the district in which the birth resulting in stillbirth occurred within three days following receipt by the State Registrar of the parent's request for the certificate, (3) a certified copy of a Certificate of Birth Resulting in Stillbirth will be provided by the State Registrar or the appropriate local registrar exclusively to the parents on an "as requested" basis following the written request for creation of said certificate, and (4) in all cases where a Certificate of Birth Resulting in Stillbirth is not registered within one year after the date of delivery, a certificate marked "delayed" may be filed and registered, provided that verifiable medical documentation of the stillbirth is provided to the State Registrar. The Department also indicates in the proposed new rule that the parent's written request may be made on a form designed and approved by the State Registrar, that Certificates of Birth Resulting in Stillbirth will be made available to parents by the State Registrar for fetal deaths beginning from the year 1969 to present, that the certified copy of a "delayed" Certificate of Birth Resulting in Stillbirth will be issued bearing the words, "Delayed Certificate of Birth Resulting in Stillbirth," and that subsequent to the initial issuance of a Certificate of Birth Resulting in

Stillbirth, the parent(s) may obtain certified copies of the Certificate of Birth Resulting in Stillbirth, so long as he, she or they are able to identify the record and provide documentation to verify that he, she or they are the parent(s) of the subject of the record. The Department is proposing that existing N.J.A.C. 8:2-1.3, 1.4 and 1.5 be recodified as N.J.A.C. 8:2-1.4, 1.5 and 1.6, respectively.

The Department is proposing that N.J.A.C. 8:2-1.4 be amended to modify subsection (a) and add subsections (c) and (d), which would address the requirement within P.L. 2003, c. 312 (N.J.S.A. 26:8-37) that the person who prepares the Certificate of Birth Resulting in Stillbirth shall leave blank any references to the stillborn child's name if the stillborn child's parent does not wish to provide a name for the stillborn child. With regard to the suggested amendment to proposed N.J.A.C. 8:2-1.4(a), the Department is proposing, consistent with the proposed amendment to N.J.A.C. 8:2-1.1 discussed above, that in addition to prohibiting the use of obscenities and numerals, the Department also prohibit the use of symbols in a child's name. As explained earlier, the reason for this proposed amendment is that the Department cannot record a name which consists of or contains non-alphabetical symbols. This amendment is not intended, however, to prohibit the use of accent marks or similar markings which are traditionally used in association with alphabetical characters. Proposed new N.J.A.C. 8:2-1.4(c) would indicate that the parent(s) of a stillborn child may elect to record a name on the fetal death certificate, however, a name shall not be required. Proposed new N.J.A.C. 8:2-1.4(d) would require that in the event that a parent(s) requests a Certificate of Birth Resulting

in Stillbirth and the fetal death record on file indicates that no name was given on the original report, the State Registrar will create the Certificate of Birth Resulting in Stillbirth without a name and any subsequent certified copies will be issued in the same manner. Proposed N.J.A.C. 8:2-1.4(d) adds, however, that a parent(s) who wishes to amend the fetal death record and/or Certificate of Birth Resulting in Stillbirth so as to add a name may do so by completing a correction form designed and approved by the State Registrar, which form may be obtained from the local registrar's office or from the Office of the State Registrar.

The Department is proposing that existing subchapter 2 be recodified as subchapter 3 and be replaced with a new subchapter 2 which would explain the procedures for obtaining certified copies and certifications of records of live birth. These proposed procedures would be in accord with Executive Order #18 which requires in pertinent part that the Department establish standardized forms for the issuance of certified copies of vital records which contain safety features for authentication purposes and to deter forgery. Executive Order #18 also requires, and the proposed procedures would ensure, that the certified copy form created by the Department is readily distinguishable from the form designated for certifications of vital records which shall be used for informational purposes only. In addition, Executive Order #18 requires, and the proposed procedures would ensure, that a State or local registrar may issue a certified copy of a record of live birth only to persons who establish themselves as, (1) the subject of the vital record, (2) the subject's parent, legal guardian or legal representative, (3) the subject's child, grandchild or sibling, if of legal age, (4) a State or federal agency

seeking the record for official purposes, (3) a person seeking the record pursuant to court order, or (4) a person seeking the record under other emergent circumstances, as determined on a case-by-case basis by the Commissioner.

N.J.A.C. 8:2-3, recodified from N.J.A.C. 8:2-2, concerns fees charged by the Department associated with requests to search, copy or change records of live birth or stillbirth. The Department is proposing that new N.J.A.C. 8:2-3.1(a), recodified from N.J.A.C. 8:2-2.1(a) be amended, adding paragraphs “1,” “2,” “3,” and “4.” Paragraph “1” would indicate that for each search of records of live birth or stillbirth, whether or not a certification or certified copy is made, the applicant shall remit to the State Registrar a fee of \$25.00, with the exception of searches of genealogical records of live birth or stillbirth under paragraph “2” and searches for which there shall be no fee pursuant to N.J.S.A. 26:8-63. Paragraph “2” would provide that for any search of genealogical records of live birth or stillbirth, whether or not a certification or certified copy is made, the applicant shall remit to the State Registrar a fee of \$25.00, plus a fee of \$1.00 for each additional year searched, except as provided by N.J.S.A. 26:8-63. As explained above with regard to the introduction of the new term, “genealogical record,” the intent of this fee scheme is that whereas the Department would charge a fee of \$25.00 for each search of a non-genealogical record of live birth or stillbirth, whether or not a certification or certified copy is made, for the search of genealogical records, the Department would charge a fee of \$25.00 for the first year searched only and would then charge \$1.00 for each additional year searched. Proposed paragraph “3” would state that the fee for each additional copy of a record of live birth or

stillbirth would be \$2.00 and proposed paragraph “4” would indicate that fees for certified copies or certifications obtained from a local registrar shall be set by municipal ordinance.

N.J.S.A. 26:8-64, currently provides that for any search of the files and records of births, deaths, marriages or domestic partnerships, whether or not a certification or a certified copy is made, the State Registrar shall be entitled to a minimum fee of \$4.00, which fee shall be paid by the applicant, except as provided by N.J.S.A. 26:8-63, and that the fee for each additional copy shall be \$2.00. Consequently, under the existing version of N.J.A.C. 8:2-2.1(a), recodified herein as N.J.A.C. 8:2-3.1(a), which refers only to the above-cited statute, the Department has the discretion to charge a fee of greater than the “minimum fee of \$4.00.” Nevertheless, since 1983, the Department has charged those requesting a search of vital records only the minimum fee of \$4.00. During that time, the Department has strived to provide a significant upgrade in services, but has found it difficult to do so under the current fee structure. Moreover, a comparison of fee rates for birth and death record searches listed in the United States Census Bureau report, entitled, “Where to Write for Birth and Death Records in the United States and Outlying Areas,” reveals that New Jersey charges the third lowest rate in the country. Since the events of September 11, 2001, the nationwide demand for increased security has made it necessary for our citizens to provide proof of their identities in order to obtain vital records. The mandate set forth in the Governor’s Executive Order #18 instructs the Department to protect the vital records of our citizenry, thereby requiring more

involved security measures. Consequently, providing service to our citizenry has become more labor intensive, time consuming and costly. The proposed fee increase from \$4.00 to \$25.00 would generate a significant portion of the revenue needed to offset the expenses incurred by the Office of the State Registrar to purchase certificate paper with security features, the cost of technology to be procured to affect standardized storage and issuance of vital records and to hire additional personnel if needed.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption, with amendment, would serve an important social purpose, namely, allowing parents to name their children as they see fit, limited only by the prohibition against the use of obscenities, numerals and symbols, or any combination thereof. There was a time, prior to the promulgation of these rules, that the naming of a child was controlled by common law, which required that a child be given the legal surname of its mother. If the mother was unmarried, the child was given her maiden name, or her surname by prior marriage. If the mother was married, the child took the husband's surname. A series of court challenges to this practice as well as certain shifts in societal norms, resulted in the existing provisions of N.J.A.C. 8:2, proposed for



readoption, which state clearly and unequivocally that the designation of a child's name including the surname is the right of the child's parent(s).

With regard to proposed new N.J.A.C. 8:2-1.3, pertaining to the creation of a Certificate of Birth Resulting in Stillbirth, the Department anticipates a positive social impact on women and families who have experienced a pregnancy resulting in the delivery of a stillborn child. Specifically, those individuals would be able to obtain the Certificate of Birth Resulting in Stillbirth, thereby acknowledging the pregnancy, providing comfort to the family, and assisting in their recovery from the grief associated with the delivery of the stillborn child.

With regard to the proposed amendments necessitated by Executive Order #18, pertaining to measures to deter the misuse of vital records by establishing safeguards regarding the issuance of such records, the Department also anticipates a positive social impact. Specifically, the misuse of official identity records presents grave risks to the public by those seeking to perpetrate frauds and other crimes on New Jersey's citizens, and, more critically, potentially by those within our borders who wish to endanger the safety and security of our State and the nation through terrorism. It is the Department's intent through its proposed amendment of N.J.A.C. 8:2 to do its part in protecting the citizens of this State and the nation against such risks.

#### Economic Impact

The Department anticipates that the proposed amendments to N.J.A.C. 8:2 pertaining to the creation of a Certificate of Birth Resulting in Stillbirth would

have a limited economic impact. Specifically, the Department would make these certificates available exclusively to parents of stillborn children and only upon written request from the parent(s), through a licensed health care professional. The Department's experience since the effective date of P.L. 2003, c. 312, coupled with the experiences of other States with similar laws, indicates that the number of individuals who will request the Certificate of Birth Resulting in Stillbirth will be relatively small. Parents would be able to obtain certified copies of the Certificate of Birth Resulting in Stillbirth from the State Registrar under the fee schedule of vital records set by the Department of Health and Senior Services or from the appropriate local registrar under the fee schedule established by local ordinance. The Department would incur some additional costs associated with the creation of a new certificate to be dispensed to the parent(s) of a stillborn child when requested, however, the Department believes that this additional expense would be outweighed by the benefit to parents recovering from the grief of having delivered a stillborn child.

With regard to the proposed amendment to N.J.A.C. 8:2-2.1 (recodified N.J.A.C. 8:2-3.1) reflecting an increase in the fee from \$4.00 to \$25.00 for any search of the files and records of live birth or stillbirth, whether or not a certification or certified copy is made, as explained in the summary above, since 1983, the Department has charged those requesting a search of vital records the minimum fee of \$4.00. During that time, the Department has strived to provide a significant upgrade in services, but has found it difficult to do so under the current fee structure. Moreover, a comparison of fee rates for birth and death record

searches listed in the United States Census Bureau report, entitled, "Where to Write for Birth and Death Records in the United States and Outlying Areas," reveals that New Jersey charges the third lowest rate in the country. Since the events of September 11, 2001, the nationwide demand for increased security has made it necessary for our citizens to provide proof of their identities in order to obtain vital records. The mandate set forth in the Governor's Executive Order #18 instructs the Department to protect the vital records of our citizenry, thereby requiring more involved security measures. Consequently, providing service to our citizenry has become more labor intensive, time consuming and costly. The proposed fee increase from \$4.00 to \$25.00 would generate a significant portion of the revenue needed to offset the expenses incurred by the Office of the State Registrar to purchase certificate paper with security features, the cost of technology to be procured to affect standardized storage and issuance of vital records and to hire additional personnel if needed.

With regard to the remaining provisions of N.J.A.C. 8:2 proposed for readoption, the Department does not anticipate any economic impact on the individuals affected by this chapter. The Department of Health and Senior Services conducts ongoing training, at a minimal cost to the State, of local registrars and hospital personnel, who are responsible for collecting and completing birth record information. The collection and completion of this birth record information is required by statute (N.J.S.A. 26:8-1, et seq.).

#### Federal Standards Statement

The rules proposed for readoption with amendment are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

#### Jobs Impact

As indicated within both the summary and the economic impact statement, the proposed fee increase at N.J.A.C. 8:2-2.1 (recodified N.J.A.C. 8:2-3.1) may facilitate the hiring of additional staff by the Department, if needed, in order to perform the functions required of the Office of the State Registrar in recording and issuing official documents related to vital records and doing so using the more labor intensive and costly safety measures mandated by Executive Order #18. As explained above, these safety measures were mandated by the Governor in order to protect the citizenry of New Jersey and the nation against those seeking to perpetrate frauds and other crimes as well as those who wish to endanger the safety and security of our State and the nation through terrorism. With the exception of the above, the Department does not expect that the rules proposed for readoption with amendments would result in the generation or loss of jobs in the State.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments would not have an impact on the agriculture industry of the State.

### Regulatory Flexibility Statement

The rules proposed for readoption and the proposed amendments would not impose reporting or recordkeeping requirements on small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. Rather, the rules proposed for readoption with amendments would affect only the natural parents of a newborn or stillborn child in choosing the given and surname for the child or requesting a Certificate of Birth Resulting in Stillbirth for a stillborn child. Consequently, a Regulatory Flexibility Analysis is not required.

### Smart Growth Impact

The Department does not anticipate that the rules proposed for readoption with amendments would have any impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:2.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. CREATION OF [BIRTH RECORD] A RECORD OF LIVE BIRTH AND A CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH

#### 8:2-1.1 Purpose and scope

These rules create the [birth record and] record of live birth and the Certificate of Birth Resulting in Stillbirth. The rules also permit the parents, at the time of birth, to choose any name for their child without restrictions, except for names which contain obscenities [or], numerical characters, or symbols. The rules set forth the options open to a parent in the naming of the child, and in the event of a stillbirth, the option not to name the child, and clarify whom the informant of the birth information should be.

#### 8:2-1.2 Definitions

The following words and terms, as used in this chapter, shall have following meanings, unless the context clearly indicates otherwise.

“Certificate of Birth Resulting in Stillbirth” means a certificate created from the information obtained from the fetal death certificate at the request of the parent of a stillborn child where the fetal death has been registered with the Department of Health and Senior Services.

“Certified Copy” means a copy of a vital record issued on a special type of safety paper containing a variety of security features and stamped with the raised seal of the State of New Jersey or the seal of the municipality or county where the copies are issued, and verified by the Office of the State Registrar as true and correct.

“Certification” means a document containing information obtained from a vital record made available for informational purposes only. It cannot be used for

proof of identity or for legal purposes. It is created on plain bond paper without the raised seal of the State of New Jersey or the seal of the municipality or county where the certifications are issued.

. . .

“Fetal death” or “stillbirth” means death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of the pregnancy; the death is indicated by the fact that after such expulsion, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

“Genealogical records” means vital records traditionally requested for the purpose of obtaining the lineage of a person, family or group from a family. Records of birth are considered genealogical after 80 years have passed from the date of birth.

“Identify” means to provide, by way of approved application, letter, or facsimile, detailed proof of knowledge of the vital record being requested and must include at a minimum, all information requested on the Vital Statistics and Registration application form.

. . .

“Licensed health care professional” means a physician, physician assistant, advanced practice nurse, registered nurse, licensed practical nurse, or any other health care professional licensed under N.J.S.A. 45 or analogous

statutes in other States. The licensed health care professional need not be the individual who performed the delivery in order to transmit the parent's written request for a Certificate of Birth Resulting in Stillbirth to the State Registrar pursuant to N.J.A.C. 8:2-1.3.

"Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of the pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps."

. . .

"Local registrar" or "municipal registrar" means the local registrar of vital statistics of any district.

"Vital record" means the birth, death, fetal death, marriage and domestic partnership records from which vital statistics are produced.

"Vital statistics" means statistics concerning births, deaths, fetal deaths, marriages and domestic partnerships established pursuant to P.L.2003, c.246 (N.J.S.A. 26:8A-1, et seq.).

8:2-1.3 Creation of a Certificate of Birth Resulting in Stillbirth: Application, Issuance, and Delayed Reports



(a) A Certificate of Birth Resulting in Stillbirth shall be created by the State Registrar upon a parent's written request that has been transmitted to the State Registrar by a licensed health care professional on the parent's behalf. The State Registrar shall create the Certificate of Birth Resulting in Stillbirth based on information obtained from a fetal death certificate already on file with the State Registrar.

1. The written request may be made on the form designed and approved by the State Registrar for creation and issuance of a certified copy of a Certificate of Birth Resulting in Stillbirth or a reasonable facsimile thereof.

2. A copy of the Certificate of Birth Resulting in Stillbirth shall be filed by the State Registrar with the local registrar of the district in which the birth resulting in stillbirth occurred within three days following receipt by the State Registrar of the parent's request for the certificate.

(b) The State Registrar or the local registrar shall provide a certified copy of the Certificate of Birth Resulting in Stillbirth exclusively to the parents on an "as requested" basis following the written request for creation of said certificate. Certificates of Birth Resulting in Stillbirth shall be made available to parents for documented fetal deaths beginning from the year 1969 to the present.

(c) In all cases where a Certificate of Birth Resulting in Stillbirth is not registered within one year after the date of delivery, a certificate marked “delayed” may be filed and registered by the State Registrar, provided that verifiable medical documentation of the stillbirth is provided to the State Registrar.

1. A certified copy of a “delayed” Certificate of Birth Resulting in Stillbirth shall be issued bearing the wording “Delayed Certificate of Birth Resulting in Stillbirth.”

(d) Subsequent to the initial issuance to the parent(s) of a Certificate of Birth Resulting in Stillbirth under (a) through (c) above, the State Registrar or the local registrar may only issue a certified copy of a Certificate of Birth Resulting in Stillbirth to a person who satisfies the following requirements:

1. The person is able to identify the record; and
2. The person produces documentation verifying that he or she is the parent of the subject listed on the Certificate of Birth Resulting in Stillbirth.

(e) The State Registrar or local registrar may issue certifications containing information obtained from the Certificate of Birth Resulting in Stillbirth to requestors not identified in (d) above. All certifications issued under this subsection shall state that they are for informational purposes only and are not to be used for legal purposes.

8:2-1.[3]4 Designation of child's name

(a) The designation of a child's name including the surname is the right of the child's parent(s). The child may be given any chosen name(s) or surname, except that the State Registrar may reject a name that contains an obscenity, numerals, symbols, or a combination of letters [and], numerals or symbols, or a name that is illegible. The chosen name shall be printed on the back of the birth record and the birth record shall be signed by one or both parents. The hospital official who witnesses the signing shall also sign the birth record.

1. - 2. (no change)

(b) (no change)

(c) The parent(s) may elect to record a name on the fetal death certificate, however a name shall not be required.

(d) In the event that a parent(s) requests a Certificate of Birth Resulting in Stillbirth and the fetal death record on file indicates that no name was given on the original report, the State Registrar shall create the certificate without a name of the stillborn child and any subsequent certified copies will be issued in the same manner.

(e) A parent(s) who wishes to amend the fetal death record to add a name may do so by completing a correction form designed and approved by the State Registrar with the Office of the State Registrar. Such correction shall also be made to the Certificate of Birth Resulting in Stillbirth. Copies of the correction form may be obtained from the local registrar's office or from the Office of the State Registrar, P.O. Box 370, Trenton, New Jersey, 08625-0370.

8:2-1.[4]5 Names of parents

(a) – (d) (No change)

8:2-1.[5]6 Informant

(No change)

## SUBCHAPTER 2 ACCESS TO RECORDS OF LIVE BIRTH

### 8:2-2.1 Certified Copies

(a) The State Registrar or a local registrar may only issue a certified copy of a record of live birth to a person who satisfies the following requirements:

1. The person is able to identify the record;
2. The person provides, at a minimum, all of the information requested on the Vital Statistics and Registration application form; and
3. The person produces documentation verifying that he or she is:
  - i. The subject of the record of live birth;
  - ii. The subject's parent;

- iii. The subject's legal guardian or legal representative;
- iv. The subject's child, grandchild or sibling, if of legal age;
- v. A State or federal agency requesting the record for official purposes;
- vi. A person requesting the record pursuant to a court order;
- vii. A person requesting the record under emergent circumstances, as determined by the Commissioner.

#### 8:2-2.2 Certifications

(a) The State Registrar or local registrar may issue certifications containing information obtained from the record of live birth to requestors not identified in N.J.A.C. 8:2B-3.1(a)3 so long as those requestors are first able to identify the record sought.

(b) All certifications issued under (a) above shall state that they are for informational purposes only and are not to be used for identification or legal purposes.

#### SUBCHAPTER [2]3 FEES

##### 8:2-[2]3.1 Fees; refund of fees; excess payment

(a) Fees for birth record searches, copies of birth records or changes to birth records are specified in N.J.S.A. 26:8-40.1, 26:8-62; 26:8-63; 26:8-64; and 2A:52-4 (Vital Statistics).

1. For each search of records of live birth or stillbirth, whether or not a certification or certified copy is made, the applicant shall remit to the State Registrar a fee of \$25.00, with the exception of searches under paragraph 2 below and searches for which there shall be no fee pursuant to N.J.S.A. 26:8-63.

2. For any search of genealogical records of birth or stillbirth, whether or not a certification or certified copy is made, the applicant shall remit to the State Registrar a fee of \$25.00, plus a fee of \$1.00 for each additional year searched, except as provided by N.J.S.A. 26:8-63.

3. The fee for each additional copy of a record of live birth or stillbirth shall be \$2.00.

4. Fees for certified copies or certifications obtained from a local registrar shall be set by municipal ordinance.

(b) (No change)